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PROGRAMME BUDGET FOR THE BIENNIUM 1994-1995

FINANCING OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

Conditions of service and allowances of the members of the International Tribunal

Note of the Secretary-General

1. The Security Council, by its resolution 827 (1993) of 25 May 1993, decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and adopted its statute. 1/ Article 13, paragraph 4, of the statute provides that the judges of the Tribunal shall be elected for a term of four years and that the terms and conditions of services shall be those of the judges of the International Court of Justice.

2. The Advisory Committee on Administrative and Budgetary Questions, in its report dated 22 July 1993 (A/47/980), requested the Secretary-General to submit a report to the General Assembly at its forty-eighth session on the requirements of the Tribunal. The report, among other things, was to provide detailed justification of the conditions of service and allowances of the judges of the Tribunal.

3. The Secretary-General recommended to the General Assembly that, in view of the provisions of article 13, paragraph 4, of the statute of the Tribunal, the conditions of service of the judges of the Tribunal shall be those of the judges of the International Court of Justice (see A/C.5/48/36). However, the Secretary-General noted that the term of office of the judges of the Tribunal was four years in duration versus the nine-year term served by the members of the Court. Accordingly, the Secretary-General recommended that the pension and survivors' benefit entitlements applicable to the members of the Court be adjusted to reflect the shorter term of appointments of the members of the Tribunal. Otherwise, the same emoluments in terms of salaries and travel

benefits as approved for the members of the Court would be applicable to the judges of the Tribunal.

4. To sum up, the conditions of service and allowances proposed in document A/C.5/48/36 were as follows:

(a) An annual salary of $145,000, as approved for the members of the International Court of Justice by the General Assembly in its resolution 45/250 of 21 December 1990;

(b) First class travel and subsistence benefits as established by the General Assembly in its resolution 37/240 of 21 December 1982;

(c) A pension entitlement of a member of the Tribunal who serves a full four-year term of $20,000: the pension of a member who is re-elected should be increased by an additional $150 per month for each further month of service, up to a maximum of $30,000 a year;

(d) In the event of a death of a member of the Tribunal, survivors would be compensated in the form of a lump-sum payment equal to one month's base salary for each year of service, subject to a minimum of one month and a maximum of four months;

(e) With regard to relocation allowance upon completion of service, a member of the Tribunal who maintains a bona fide residence at The Hague for at least three continuous years during service with the Tribunal should receive a lump sum equal to 12 weeks' net salary on completion of appointment and resettlement outside the Netherlands. A member who completes four continuous years or more of eligibility shall receive the equivalent of 16 weeks of annual net base salary.

5. Having considered the report of the Secretary-General, the Advisory Committee on Administrative and Budgetary Questions noted that, had it had an opportunity to review the administrative and budgetary aspects of the statute of the International Tribunal before it was adopted, it would have made recommendations to the General Assembly on the conditions of service of the judges of the Tribunal taking into account, among other things, the exclusive mandate and duration of the Tribunal, its anticipated work programme and the terms of office of the judges of the Tribunal. The Committee expressed the view that questions relating to conditions of service, which are issues having administrative and budgetary implications, should be brought to the General Assembly for its action before final action is taken in any other forum. In that light, the Advisory Committee deferred action on the conditions of service of the Tribunal's judges pending further experience with regard to the precise nature of the requirements of the Tribunal and the work of the judges (A/48/915, paras. 4-9 and 12).

6. The General Assembly, in its resolution 48/251 of 14 April 1994, requested the Secretary-General to submit to the General Assembly, through the Advisory Committee, a further report on the conditions of service of the judges, in the light of the provisions of article 13, paragraph 4, of the statute of the International Tribunal, as the work of the Tribunal proceeds and the precise nature of its requirements clearly emerges.

7. The members of the Tribunal have proposed changes to the pension scheme and survivors' benefits as set out in the Secretary-General's report. Members of the International Court of Justice receive a lump-sum pension of $50,000 after nine years of service. In order to bring the pension scheme of the judges of the Tribunal in line with that of the International Court of Justice, the pension entitlement for the judges who have served a full four-year term should be $22,000 (approximately four ninths of $50,000). The pension of a member who has been re-elected should be increased up to a maximum of $44,400 for two full-term periods of service (instead of the $30,000 proposed by the Secretary-General).

8. However, in line with the proposals put forward by the International Court of Justice in 1993 (A/C.5/48/66, paras. 36-41) to the effect that the pre-1991 pension scheme should be restored to the lump-sum payment of 50 per cent of the final salary after a full term, members of the Tribunal propose that each judge should receive 22 per cent of his/her final salary after four years, increasing incrementally to a maximum of 44 per cent if a judge serves two four-year terms.

9. In addition, account should be taken of the position of those judges who, for reasons independent of their will, serve for less than a full term. It is suggested that judges should be entitled to receive the aforementioned pension if they serve a full term of four years or at least a minimum of three and a half years, provided that the lesser duration of service is due to the need to replace another judge or any similar cause independent of the judge's will or choice (such as serious medical impediment).

10. The members of the Tribunal are of the view that the proposed survivors' benefits for judges of the Tribunal are not fully in line with that of members of the International Court of Justice. In the event of a death of the latter, their survivor receives a lump-sum payment equal to one month's base salary for each year of service, with a minimum of three months and a maximum of nine months. In the case of the judges of the Tribunal, it was proposed by the Secretary-General that provision be made for a minimum of one month and a maximum of four months. The contrast between the minima is not justified. Members of the Tribunal are as likely to die in office as members of the International Court of Justice and survivors' needs will be no less. The duration of the term cannot logically affect the minimum figure. The minimum figure should be equivalent to two months' base salary, even if death occurs in the first year of service. The maximum will remain four months.

11. With regard to the adjustments to the pension scheme as proposed by the members of the Tribunal and set out in paragraph 8 above, the proposed pension amount of $22,000 for judges who have completed a full four-year term reflects four ninths of the pension of $50,000 established for the members of the International Court of Justice. This would be consistent with the literal provisions of article 13, paragraph 4, of the statute of the International Tribunal. The alternative regarding survivors' benefits should be considered only if similar provisions are approved by the General Assembly for the members of the Court. To enact such a provision for the judges of the Tribunal without similar consideration for the members of the Court would create a disparity inconsistent with the statute.

12. With regard to the proposed amendment of the Secretary-General's prior recommendation regarding the survivors' benefits, should the General Assembly accept the Tribunal's proposal set forth in paragraph 10 above, the Secretary-General would concur with such a modification. The original minimum figure of one month was established as a prorated period from that in effect for members of the International Court of Justice.

13. It should be further noted that, in its resolution 48/252 of 26 May 1994, the General Assembly acted on a number of recommendations of the Secretary- General regarding the conditions of service of members of the International Court of Justice (see A/C.5/48/66). The General Assembly decided that the members of the International Court of Justice who have taken up primary residence at The Hague (a) should be reimbursed, up to a ceiling of $9,750, for the actual cost of educating their children in respect of each child each year up to the award of the first recognized degree and that provision should be made for one related return journey per year in respect of each child between the place of scholastic attendance, when outside the Netherlands, and The Hague; and (b) should be reimbursed, up to a ceiling of $13,000, for the actual cost of educating their disabled children in respect of each child each year up to the award of the first recognized degree and that provision should be made for one related return journey per year in respect of each child between the place of scholastic attendance, when outside the Netherlands, and The Hague.

14. Accordingly, consideration might be given to extending those additional educational benefits to members of the Tribunal. Subsequent changes in educational benefits and entitlements for the members of the Court should be applicable to the judges of the Tribunal.

15. The Secretary-General fully appreciates the concerns expressed by the Advisory Committee and the General Assembly with regard to the terms and conditions of service of the judges of the Tribunal. At the same time, the adoption by the Security Council of article 13, paragraph 4, of the statute of the International Tribunal leaves little flexibility: the conditions of service shall be those of the members of the International Court of Justice. As to additional experience obtained with regard to the precise nature of the requirements of the Tribunal and the work of the judges, given that the Tribunal has been functioning for a very limited time, the Secretary-General would hesitate to draw any conclusions in that respect at the present time. The Tribunal will become fully operational at the beginning of January 1995.

16. Other than the refinements proposed by the judges of the International Tribunal set out above, the Secretary-General is not in a position to offer any additional recommendations regarding the conditions of service for the judges of the Tribunal beyond those set out in his previous report (A/C.5/48/36). At the same time, the Secretary-General takes note of the intention of the Advisory Committee to revert to the matter at the forty-ninth session of the General Assembly in the light of experience gained and newly available information.

Notes

1/ S/25704 and Corr.1, annex.